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13 *Attorneys for MGM Resorts International,*  
14 *Mandalay Bay LLC, Mandalay Resorts Group,*  
15 *MGM Resorts Festival Grounds, LLC and*  
*MGM Resorts Venue Management, LLC*

16 **UNITED STATES DISTRICT COURT FOR THE**  
17 **DISTRICT OF NEVADA**

18 MGM RESORTS INTERNATIONAL and  
19 MANDALAY BAY, LLC, and MANDALAY  
20 RESORTS GROUP, and MGM RESORTS  
FESTIVAL GROUNDS, LLC and MGM  
RESORTS VENUE MANAGEMENT, LLC,

21 Plaintiffs,

22 v.

23 ZURICH AMERICAN INSURANCE  
24 COMPANY,

25 Defendant.

Case No.

**COMPLAINT**

**JURY TRIAL DEMANDED**

26 COME NOW Plaintiffs, MGM RESORTS INTERNATIONAL (“MGM Resorts”),  
27 MANDALAY BAY, LLC (“Mandalay Bay”), MANDALAY RESORTS GROUP (“Mandalay  
28

1 Resorts”), MGM RESORTS FESTIVAL GROUNDS, LLC (“MRFG”), and MGM RESORTS  
2 VENUE MANAGEMENT, LLC (“MRVM”) (collectively herein, “MGM”), by and through their  
3 counsel, for their Complaint against Defendant, ZURICH AMERICAN INSURANCE COMPANY  
4 (“Zurich”), for breach of contract, declaratory relief, tortious breach of the implied covenant of good  
5 faith and fair dealing (bad faith) and violation of Nevada’s Unfair Claims Settlement Practices Act,  
6 allege and state as follows:

### 7 **NATURE OF ACTION**

8 1. This is a civil action for breach of contract, declaratory relief, bad faith, breach of  
9 the implied covenant of good faith and fair dealing, and violations of the Unfair Claims Settlement  
10 Practices Act, arising out of the Defendant’s wrongful breach of its duty to defend MGM, breach of  
11 its duty of good faith and fair dealing, and bad faith conduct with respect to claims made against  
12 MGM and other defendants by third parties (the “Third-Party Plaintiffs”) concerning an incident that  
13 occurred at and near the Mandalay Bay Resort & Casino and the Las Vegas Village during the Route  
14 91 Harvest Country Music Festival, on October 1, 2017 (the “Event”).

15 2. Zurich accepted MGM’s claim related to the Event under its insurance policy and  
16 acknowledged its defense obligation to MGM, but Zurich has not fully honored its contractual  
17 obligations. Insurance coverage related to the Event is not in dispute in this action.

### 18 **THE PARTIES**

19 3. Plaintiff MGM Resorts is a Delaware corporation with substantial operations in Las  
20 Vegas, Nevada.

21 4. Plaintiff Mandalay Bay is a Nevada limited liability company, as successor by  
22 conversion from Mandalay Corporation, with its principal place of business in Las Vegas, Nevada.  
23 Mandalay Bay is a wholly-owned subsidiary of Mandalay Resorts.

24 5. Plaintiff Mandalay Resorts is organized in Nevada and is a wholly-owned subsidiary  
25 of MGM Resorts.

26 6. Plaintiff MRFG is organized in Nevada and is a wholly-owned subsidiary of  
27 Mandalay Resorts, with its principal place of business in Las Vegas, Nevada.

28 7. Plaintiff MRVM is organized in Nevada and is a wholly-owned subsidiary of MGM

1 Resorts, with its principal place of business in Las Vegas, Nevada.

2 8. Defendant Zurich is a New York corporation that is headquartered in Schaumburg,  
3 Illinois.

#### 4 **JURISDICTION AND VENUE**

5 9. This Court has subject matter jurisdiction over this civil action pursuant to 28 U.S.C.  
6 § 1332(a)(1) and § 1332(c)(1), because the amount in controversy (exclusive of interest and costs)  
7 exceeds \$75,000, and because there is complete diversity of citizenship of the parties.

8 10. Venue for this action is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2)  
9 because Zurich is a resident of this judicial district for purposes of 28 U.S.C. § 1391(a)(2) and because  
10 a substantial part of the events or omissions giving rise to this claim occurred in and around this  
11 judicial district.

#### 12 **GENERAL ALLEGATIONS**

##### 13 **The Event and Ensuing Litigation Against MGM**

14 11. The Event occurred on October 1, 2017, and was a tragic, unexpected, unforeseeable  
15 occurrence perpetrated by a deranged, now-deceased, individual who will not be dignified by being  
16 named here. During the Event, this evil person carried out a cold, calculated plan in which he was  
17 intent on murdering and maiming concertgoers, passersby and employees, by firing deliberately-  
18 modified assault rifles into a crowd of people at the Route 91 Harvest Country Music Festival,  
19 resulting in senseless loss of lives, bodily injuries, and property damage.

20 12. Following the Event, numerous claims were made and complaints were filed by  
21 Third-Party Plaintiffs in a variety of jurisdictions against MGM and other defendants (the  
22 “Underlying Litigation”). Presently, MGM is aware of in excess of 4,000 claimants who are seeking  
23 compensation from MGM for their claims arising out of the Event.

24 13. Third-Party Plaintiffs in the Underlying Litigation include estates of deceased  
25 persons, persons alleging bodily injuries of varying degrees of severity, and persons claiming various  
26 damages or injuries caused by the Event.

27 14. MGM disputes any liability arising out of the Event and is vigorously defending  
28 itself in all of the cases and from all of the claims that comprise the Underlying Litigation.

15. The Third-Party Plaintiffs in the Underlying Litigation are represented by some of the most prominent plaintiffs' law firms in the country.

### **The Zurich Policy**

16. Zurich sold to MGM Primary Commercial General Liability Insurance Policy No. GLO 4279885-09 for the policy period from July 1, 2017 to July 1, 2018 (the "Zurich Policy"), providing an "Each Occurrence" Limit of \$1,000,000. MGM Resorts is the Named Insured on the Zurich Policy, and by way of a Broad Form Named Insured endorsement, each of the MGM-subsidary Plaintiffs is also a Named Insured. A true and correct copy of the Zurich Policy is attached hereto as Exhibit "A."

17. In the Zurich Policy, Zurich promises, among other things, to defend MGM from claims and cases like the Underlying Litigation, arising from Occurrences like the Event, without regard to the policy's limit of liability.

18. More specifically, subject to various terms and conditions, the Zurich Policy provides coverage for third parties' claims and suits alleging "bodily injury" or "property damage" during the policy period that result from an "occurrence," which means an "accident, including continuous or repeated exposure to substantially the same general harmful conditions," and the policy includes a duty to defend against such claims and suits.

19. The Coverage A Insuring Agreement states: "We will pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies. We will have the right and duty to defend the insured against any 'suit' seeking those damages....But: . . . (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements . . . ."

20. The Zurich Policy applies in excess of a self-insured retention, for which MGM is responsible, pursuant to an endorsement titled, "Self Insured Retention" (the "SIR Endorsement"). The Zurich Policy is designed and intended, and reasonably was expected by MGM, to provide broad coverage for the most serious claims that MGM could face

21. Responsibility for the costs of the defense of MGM is addressed in the SIR Endorsement. MGM must pay for the defense of claims arising from the Event up to the limit of a

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1 single \$500,000 SIR, and subsequently Zurich must pay for all of MGM's Defense Costs, including  
2 Supplementary Payments, until such time as Zurich exhausts the limit of liability by paying  
3 settlements or judgments.

4 22. The SIR Endorsement allows discretion to MGM in controlling the course of the  
5 defense and the management and the settlement of claims.

6 23. As defined by the SIR Endorsement, "Defense Costs" means "Expenses directly  
7 allocable to specific claims and shall include but not be limited to all Supplementary Payments as  
8 defined under the policy; all court costs, fees and expenses; costs for all attorneys, witnesses, experts,  
9 depositions, reported or recorded statements, summonses, service of process, legal transcripts or  
10 testimony, copies of any public records; alternative dispute resolution; interest; investigative services,  
11 medical examinations, autopsies, medical costs containment, declaratory judgment, subrogation and  
12 any other fees, costs or expenses reasonably chargeable to the investigation, negotiation, settlement  
13 or defense of a claim or loss under the policy...."

14 24. In excess of the Each Occurrence Limit of the Zurich Policy, MGM is protected by  
15 various other insurance policies sold by other insurance companies, each of which also provides a  
16 duty to defend MGM without regard to those policies' various limits of liability.

17 25. In addition to the duty to defend, Zurich is obligated, and agreed, to pay for potential  
18 judgments and reasonable settlements recommended by defense counsel in relation to the Underlying  
19 Litigation.

20 26. Zurich is obligated to provide a complete and undivided defense to MGM for the  
21 Underlying Litigation until Zurich's policy is exhausted by actual payment of the full policy limit for  
22 judgments and reasonable settlements recommended by defense counsel and completion of the  
23 settlement process.

24 27. Where the full policy limit is paid or agreed to be paid toward a reasonable  
25 settlement, Zurich's duty to defend and duty of good faith and fair dealing require Zurich to protect  
26 MGM by completing the full settlement process for which the settlement payment is made, including  
27 through the process of executing a settlement agreement, securing a good faith settlement  
28 determination, dismissing pending lawsuits, and signing and exchanging releases for the protection

1 of MGM.

2 28. Whether considered as part of the duty to defend and pay Defense Costs or as part  
3 of the duty to pay Supplementary Payments under the Zurich Policy, Zurich's duties include the  
4 obligation to pay expenses and costs required for the administration of settlement issues, including  
5 settlement administration costs and a settlement administrator's fees.

6 **MGM's Response to the Event and Agreement with Zurich on the Defense Team**

7 29. Following the Event, consistent with its obligations under the SIR Endorsement,  
8 MGM urgently retained a competent defense team, provided notice as mentioned above to Zurich  
9 and other insurers, and immediately sought consent to the defense team's retention.

10 30. Given the magnitude of the Event, MGM had exhausted its SIR shortly after the  
11 Event through the retention and immediate deployment of defense counsel, experts and consultants  
12 necessary to the protection of the companies' interest.

13 31. As the result of certain disagreements among MGM and the insurers and resulting  
14 negotiations regarding the composition of the defense team and particular members of the team that  
15 MGM, Zurich, and other insurers either desired to include or exclude, the specific law firms and  
16 members of the defense team changed.

17 32. As a result of involved and informed discussions between MGM, on the one hand,  
18 and its insurers, on the other hand, the members of MGM's defense team members were all agreed  
19 upon between MGM, Zurich and other excess insurers of MGM that are not parties to this Action.

20 33. MGM and Zurich and other insurers of MGM ultimately agreed on a roster of law  
21 firms, defense team members, experts, consultants and vendors, and agreed on hourly rates for each  
22 member, to be adjusted annually, as well as the responsibilities of lead counsel, MGM and Zurich.

23 **Zurich and MGM's Agreement on Defending the Claims**

24 34. Following MGM's notice to Zurich of the Underlying Litigation, MGM and Zurich  
25 confirmed their understanding of their respective defense obligations. MGM and Zurich would work  
26 cooperatively to defend the cases, with defense counsel reporting jointly to the parties as directed by  
27 MGM, and with Zurich paying for the costs of defense, using firms, vendors and rates that were all  
28 negotiated and agreed. This understanding was reached over the course of discussions between

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1 MGM, Zurich and others through the remainder of 2017 and in the first couple of months of 2018.

2 35. In short, Zurich agreed it would defend MGM against the Underlying Litigation  
3 without a reservation of rights using the agreed defense team, agreed vendors, agreed rates, and  
4 agreed methods of reporting to and consulting with MGM, the defense team and the other insurers.

5 36. MGM has fulfilled all of its obligations under the Zurich Policy following the Event.  
6 This includes consulting with Zurich and agreeing with Zurich on lead defense counsel and litigation  
7 team members; negotiating reasonable rates for team members; accepting various insurer demands,  
8 where possible; holding regularly-scheduled telephone conferences and in-person meetings;  
9 responding to questions and outreach; explaining and consulting on strategic decision-making; and  
10 paying attention to potential opportunities for resolution.

11 37. Zurich has not fulfilled all of its obligations under the Zurich Policy and has failed  
12 to perform as it agreed with MGM following the Event. More specifically, Zurich has failed to pay  
13 for all reasonable Defense Costs, including substantial amounts due to retained attorneys, expert  
14 witnesses, consultants and other vendors that Zurich specifically approved.

15 **Zurich's Bad Faith Failure To Pay Defense Costs and Protect MGM**

16 38. Despite agreeing to defend MGM and to pay Defense Costs in the Zurich Policy,  
17 despite specifically agreeing on MGM's litigation team members and reasonable rates for their  
18 services, and despite repeated objections, warnings and demands from MGM about long-unpaid  
19 defense team members or expenditures, Zurich has failed to pay all reasonable, approved Defense  
20 Costs for numerous agreed litigation team members and vendors, without any explanation or excuse.

21 39. Presently, reasonable Defense Costs in the many millions of dollars have not been  
22 paid by Zurich for valuable services and time incurred, which Zurich previously agreed to pay.

23 40. By way of examples, Zurich has refused to pay the lead law firm defending MGM  
24 for a substantial portion of the work it has performed. Other pre-agreed, critical defense vendors are  
25 separately being left unpaid by Zurich for such significant amounts that they may cease work and  
26 have threatened legal action against MGM, presenting a risk of loss of material evidence in the event  
27 certain experts and discovery vendors cease work.

28 41. Set forth as Exhibit "B," which is attached hereto and incorporated herein by



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1 reference as if set forth in full, is a chart identifying the defense firms, experts and consultants that  
2 have been necessary to MGM's defense effort, but that Zurich has refused to reimburse at the agreed  
3 rates either partially or in full for services rendered to MGM after disclosure to Zurich and with  
4 ongoing updates to it.

5 42. By failing to pay Defense Costs in a timely manner despite notice of this serious  
6 problem and repeated opportunities to cure or explain the issue, Zurich has breached the duty to  
7 defend and is acting in bad faith towards MGM, has breached the implied covenant of good faith and  
8 fair dealing, and has violated Nevada's Unfair Claims Practices Act.

9 43. As a direct and foreseeable result of Zurich's bad faith conduct and breach of its  
10 duty to defend, the defense of MGM has been directly jeopardized.

11 44. As a direct and foreseeable result of Zurich's bad faith conduct and breach of its  
12 duty to defend, MGM has been forced to pay certain of the unpaid Defense Costs itself to attempt to  
13 mitigate the foreseeable damages resulting from Zurich's actions and failures to act.

14 45. Although Zurich has been warned repeatedly of the danger of non-payment to the  
15 course of the continued defense of MGM and the potential prejudice that could result to MGM in a  
16 variety of ways, Zurich disregarded the warnings and continues to refuse to make payments, without  
17 any meritorious explanation.

18 46. The parties Zurich has declined to pay include lawyers, experts, and vendors in  
19 multiple states who have devoted significant time and resources to helping MGM through a crisis  
20 that has no precedent in U.S. history. For Zurich to refuse to abide its obligation to pay these defense  
21 team members in this circumstance is unconscionable.

22 47. Severely aggravating Zurich's behavior in failing to honor its duty to defend by  
23 paying agreed attorneys, experts and vendors for months on-end, Zurich has repeatedly, willfully  
24 thwarted MGM's ability to fully understand and correct the problems Zurich created.

25 48. Despite repeated requests, Zurich refused and/or delayed severely in providing any  
26 type of list or summary regarding how Zurich is addressing payment (or non-payment) of Defense  
27 Costs. Recently, although Zurich responded to MGM concerning a list of invoices and payments  
28 believed to be due that was provided by MGM, Zurich has still refused to provide any detailed



1 explanation of the rationale behind its reasons for non-payment of invoices for services that were  
2 necessary and indispensable to the defense of MGM.

3 49. Despite repeated requests, Zurich has refused and/or repeatedly delayed meeting  
4 with or otherwise communicating with MGM regarding its intentions to pay Defense Costs and to  
5 satisfy members of the defense team who have been left unpaid for substantial lengths of time.

6 50. At best, Zurich's payment decisions have been arbitrary and with complete disregard  
7 for MGM's interests; at worst, Zurich's payment decisions have been calculated by Zurich in bad  
8 faith, to attempt to extract concessions from MGM on unrelated and insignificant points and to  
9 attempt to terminate Zurich's duty to provide a further defense to MGM. These actions further  
10 Zurich's interest only at the expense of the interest of MGM that Zurich should be protecting first  
11 and foremost.

12 51. Zurich's performance of its duty to defend has been erratic from the beginning of  
13 the Underlying Litigation. Last year, after significant delays by Zurich with no payments to the  
14 defense team that required MGM's intervention, MGM learned that attorneys and vendors reportedly  
15 received substantial initial payments for their work in relation to the defense of the Underlying  
16 Litigation. After those initial payments, Zurich stopped performing or performed only intermittently,  
17 grudgingly and incompletely.

18 52. When MGM raised strong concerns about the slow pace of payments and non-  
19 payments last year, Zurich made some partial payments following a meeting with MGM, but Zurich  
20 then resumed its earlier pattern and did not continue making payments. When asked to pay, Zurich  
21 has provided superficial reasons that are completely false and groundless.

22 53. Rather than treating MGM and the hard-working defense team fairly, Zurich has  
23 raised numerous hurdles to paying the defense team and protecting MGM with a vigorous defense.  
24 The precise issues remain unknown, but appear to include Zurich using technical requirements to  
25 excuse a desire to pay nothing for as long as possible. These issues have never been clearly spelled  
26 out for the firms and other vendors doing work for MGM.

27 54. Zurich has refused to engage meaningfully in defense counsel's efforts to question  
28 or discuss litigation guidelines, billing guidelines, case and matter budgets, and scopes of work, which

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1 are unreasonable or inapplicable to the Underlying Litigation and coordination of the numerous,  
2 complex claims and cases it involves. In fact, Zurich has sought to justify decisions not to pay defense  
3 counsel and vendors by referring to litigation guidelines that were not agreed upon and which were  
4 not provided to MGM or defense counsel until after much of the contested work had already been  
5 performed.

6 55. The scope and cost of the extensive defense work that has been performed on behalf  
7 of MGM (and indirectly for the protection of Zurich and other insurers) is no surprise to Zurich:  
8 Zurich from the start has been directly involved in reviewing the defense and approving strategic  
9 decisions.

10 56. Payment of costs for a defense is a necessary part of the duty to defend. By failing  
11 to pay costs associated with the duty to defend, Zurich is risking the loss of crucial attorneys,  
12 witnesses, experts, consultants and evidence, and threatening imminent damage to MGM, its  
13 policyholder and fiduciary.

14 57. Zurich's obligations include acting in good faith towards MGM and not placing its  
15 own interests ahead of MGM's interests. Having agreed to defend MGM, and having agreed to pay  
16 particular defense counsel, experts, and vendors, at agreed fees deemed to be reasonable, there is no  
17 good faith basis for Zurich's conduct in making no payments in some instances and substantially  
18 underpaying in others, or in providing no records regarding invoices or payment decisions.

19 58. Zurich is interfering with and jeopardizing MGM's defense in the Underlying  
20 Litigation and attempting to prevent defense counsel from exercising their independent judgment by  
21 withholding payments to defense counsel and their consultants and vendors and by attempting to  
22 interfere with defense counsel's deployment of important experts and consultants.

23 59. Zurich has demonstrated bad faith by unnecessarily and unreasonably delaying or  
24 refusing payment to defense counsel and retained experts and vendors, by rejecting advice of  
25 attorneys it agreed to engage to defend MGM, and by attempting to use payment of defense costs as  
26 a bargaining chip rather than performing this independent obligation in good faith. Zurich's  
27 brinksmanship is risking loss of valuable witnesses and attorneys who cannot be replaced cheaply, or  
28 in some cases at all.

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60. Moreover, Zurich has repeatedly maneuvered to attempt to exhaust its policy limit outside of a global resolution, which would advance only Zurich's interests and not those of MGM, by ending Zurich's duty to defend prematurely.

61. As a result of Zurich's bad faith conduct and breach of its duty to defend, MGM clearly warned Zurich that MGM may be forced to pay the Defense Costs itself to avoid foreseeable damage that could result from Zurich's conduct, and then file suit against Zurich for breach of the duty to defend and bad faith. Zurich ignored all of MGM's warnings.

62. MGM's payment of certain Defense Costs following Zurich's selective performance of its duty to defend demonstrates the reasonableness of the Defense Costs.

63. Zurich is bound to reimburse MGM in full for all Defense Costs MGM has advanced, in addition to Zurich being bound to pay all Defense Costs MGM has not advanced as well as future Defense Costs to the defense team members directly, as previously agreed.

64. With regard to a settlement agreed to in principle, Zurich has further demonstrated bad faith by stating its intention not to pay for the costs of settlement administration or for settlement administrators' fees, even though these are a necessary and reasonable part of the complete defense of MGM, and a necessary and reasonable part of the settlement process for which settlement payments under the Zurich Policy would be made, and therefore qualify as both Defense Costs and Supplementary Payments that Zurich must pay outside the limit of liability of the Zurich Policy.

65. Zurich's position that payment of costs of settlement administration or for settlement administrators' fees will reduce the Zurich Policy's limit of liability, rather than being paid as Defense Costs or Supplementary Payments, is not a reasonable interpretation of the Zurich Policy, but is consistent with Zurich's self-interested acts in refusing to pay incurred Defense Costs and attempting to end the duty to defend prematurely as described above.

66. Zurich's conduct is oppressive, fraudulent and malicious and warrants the imposition of punitive damages.

### **COUNT I**

#### **Breach of Contract – Duty to Defend**

67. MGM repeats and incorporates the allegations set forth in Paragraphs 1 – 66 of this

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1 Complaint, as if fully set forth herein.

2 68. MGM and Zurich are parties to the Policy, which is a valid and existing contract.

3 69. The Zurich Policy expressly obligated Zurich to perform its duty to defend MGM in  
4 excess of the SIR amount set forth in the SIR Endorsement. Zurich agreed to defend claims arising  
5 from the Event without a reservation of rights.

6 70. The SIR was exhausted by payment of Defense Costs.

7 71. Following exhaustion of the SIR, Zurich began to perform its duty to defend, but  
8 Zurich subsequently ceased or materially curtailed its performance of its duty, without excuse.

9 72. Despite agreement in the Zurich Policy before the Event and confirming agreements  
10 with MGM following the Event, Zurich has failed and refused to perform completely and reasonably  
11 its duty to defend MGM from the Underlying Litigation, by failing to pay substantial amounts for  
12 incurred Defense Costs, and by stating it would not pay required settlement administration costs or  
13 settlement administrators' fees, contrary to the parties' intentions and MGM's reasonable  
14 expectations for coverage.

15 73. Because Zurich has failed to perform its duty to defend MGM, MGM has been  
16 forced to take action to protect the continued viability of MGM's defense and ensure that critical  
17 vendors and attorneys did not abandon the defense due to non-payment.

18 74. More specifically, although MGM provided Zurich with numerous opportunities  
19 and repeatedly demanded that Zurich pay the amounts due, Zurich through its silence and inaction  
20 forced MGM to pay for certain of the unpaid Defense Costs itself to avoid members of the defense  
21 team ceasing work, and forced MGM to institute this civil action seeking damages and other relief  
22 from Zurich.

23 75. By refusing to perform the duty to defend and arbitrarily refusing to pay Defense  
24 Costs to agreed vendors and attorneys, Zurich has breached the Zurich Policy.

25 76. As a direct and proximate result of Zurich's breaches of contract, MGM has been  
26 deprived of the benefits of its coverage and incurred direct damage in excess of \$75,000 on account  
27 thereof.

28 77. Accordingly, Zurich is liable to MGM for all damages sustained as a result of its

1 breaches of its duty to defend, including actual, expectancy, and consequential damages, together  
2 with interest.

3 78. As a reasonably foreseeable consequence of Zurich's breach, it has been necessary  
4 for MGM to retain counsel to bring this Complaint. Accordingly, MGM is entitled to recover its  
5 attorneys' fees and costs incurred herein.

6 79. As a reasonably foreseeable consequence of Zurich's breach, MGM's defense  
7 counsel and defense vendors have been forced to incur numerous hours of wasted time and costs  
8 attempting to obtain payment of amounts due to them for MGM's defense and engage in unnecessary  
9 dialogue with Zurich regarding unpaid invoices and to explain why payments should be made.  
10 Accordingly, MGM is entitled to recover for these additional consequential damages.

## 11 COUNT II

### 12 **Declaratory Judgment – Breach of Duty to Defend**

13 80. MGM repeats and incorporates the allegations set forth in Paragraphs 1 – 79 of this  
14 Complaint, as if fully set forth herein.

15 81. Zurich has a complete duty to defend MGM with respect to the Underlying  
16 Litigation, which is potentially covered by the Zurich Policy. Therefore, Zurich must defend MGM  
17 completely in the Underlying Litigation.

18 82. Zurich is obligated to defend MGM completely until Zurich makes actual payment  
19 of its full limit of liability for judgments or reasonable settlements recommended by defense counsel.

20 83. Zurich is obligated when a settlement is agreed to continue defending MGM through  
21 completion of the settlement process for which the settlement payment is made, including through  
22 execution of relevant settlement agreements, securing good faith settlement determinations where  
23 necessary, dismissing pending lawsuits, paying settlement proceeds into a qualified settlement fund,  
24 and signing and exchanging releases for the protection of MGM. Zurich is further obligated to pay  
25 expenses and costs required for the administration of settlement issues, including settlement  
26 administration costs and settlement administrators' fees necessary to resolution of a settlement.

27 84. An actual controversy exists between MGM and Zurich as to whether Zurich's duty  
28 to defend requires Zurich to pay for all of the Defense Costs that have been incurred and that will be

1 incurred by MGM in the defense of the Underlying Litigation, which requires this Court to enter an  
2 order declaring the rights and liabilities of the parties.

3 85. An actual controversy exists between MGM and Zurich as to whether Zurich's duty  
4 to defend MGM continues through the actual payment of the Zurich Policy limit together with  
5 completion of the full settlement process including the exchange of releases for the protection of  
6 MGM, which requires this Court to enter an order declaring the rights and liabilities of the parties.

7 86. The justiciable controversy between the parties is ripe for judicial determination.

### 8 **COUNT III**

#### 9 **Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing (Bad Faith)**

10 87. MGM repeats and incorporates the allegations set forth in Paragraphs 1 – 86 of this  
11 Complaint, as if fully set forth herein.

12 88. MGM and Zurich are parties to the Zurich Policy, which is a valid and existing  
13 contract.

14 89. MGM performed all of its obligations under the Zurich Policy, but Zurich has not.

15 90. In Nevada, there is a special implied covenant of good faith and fair dealing between  
16 an insurer and an insured or policyholder.

17 91. Under the duty of good faith and fair dealing, Zurich owes MGM a duty to put  
18 MGM's interests equal to or ahead of its own interests, and to do nothing to deprive MGM of policy  
19 benefits.

20 92. An insurance company like Zurich fails to act in good faith (and acts in bad faith)  
21 when it refuses without proper cause to compensate the insured for a loss covered by a policy, or  
22 refuses to pay for the costs of defending it against litigation that is or may be covered by the insurance  
23 policy.

24 93. Zurich breached the implied covenant of good faith and fair dealing by refusing and  
25 failing without proper cause to perform its duty to defend its policyholder, MGM, under the Zurich  
26 Policy with respect to the Underlying Litigation.

27 94. By repeatedly refusing to pay Defense Costs, without excuse, and by attempting to  
28 condition performance of the duty to defend on extraction of unreasonable and unrelated concessions

1 from MGM designed to exhaust Zurich's coverage so as to serve Zurich's own self-interest, Zurich  
2 failed to put MGM's interests equal to or ahead of their own interests.

3 95. Zurich's conduct was conscious and deliberate, willful, wanton, and reckless in  
4 disregard to MGM's interest in a full and complete defense in the Underlying Litigation, and in  
5 conscious disregard to the consequences to MGM, to such extent as to constitute oppression, fraud  
6 and/or actual malice toward MGM.

7 96. As a direct and proximate result of the Zurich's tortious and actionable conduct,  
8 MGM has sustained actual damages as set forth in greater length above, including, but not limited to,  
9 consequential damages, attorney's fees foreseeably paid as a result of Zurich's breaches, and other  
10 special damages relating to the costs of prosecuting this litigation, to be determined at trial.

11 97. As a result of Defendants' tortious conduct, and oppression, fraud or malice, express  
12 or implied, MGM is also entitled to punitive damages under NRS § 42.0005(1).

#### 13 **COUNT IV**

##### 14 **Violation of Unfair Claims Settlement Practices Act (Nev. Rev. Stat. Ann. § 686A.310)**

15 98. MGM repeats and incorporates the allegations set forth in Paragraphs 1- 97 of this  
16 Complaint, as if fully set forth herein.

17 99. Nevada's Unfair Claims Settlement Practices Act (the "Act") found in Nevada  
18 Revised Statute § 686A.310, specifies unfair practices by insurance companies and provides means  
19 to enforce these provisions.

20 100. Although violations of the Act may overlap somewhat with violations of the  
21 covenant of good faith and fair dealing, the Act provides additional remedies for other violations that  
22 may not amount to bad faith.

23 101. Among other things, the Act permits insureds to seek redress for the manner in which  
24 an insurance company handles a claim, regardless of whether the claim is denied.

25 102. Under the duty of good faith and fair dealing and the Act, Zurich owes MGM a duty  
26 to put MGM's interests equal with or ahead of its own interests, and to do nothing to deprive MGM  
27 of policy benefits. Zurich acted in bad faith and violated the Act by failing to put MGM's interests  
28 equal to or ahead of its own interests, by failing to discharge contractual duties without reasonable



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1 grounds or good cause, by refusing to provide any explanations or accountings for its actions and  
2 inactions, and by knowingly, intentionally or recklessly disregarding that its actions are depriving  
3 MGM of important policy benefits.

4 103. Among other things, Zurich violated the Act and engaged in unfair practices in the  
5 following ways: (b) “Failing to acknowledge and act reasonably promptly upon communications  
6 with respect to claims arising under insurance policies”; (c) “Failing to adopt and implement  
7 reasonable standards for the prompt investigation and processing of claims arising under insurance  
8 policies”; (e) “Failing to effectuate prompt, fair and equitable settlements of claims in which liability  
9 of the insurer has become reasonably clear”; (f) “Compelling insureds to institute litigation to recover  
10 amounts due under an insurance policy by offering substantially less than the amounts ultimately  
11 recovered in actions brought by such insureds, when the insureds have made claims for amounts  
12 reasonably similar to the amounts ultimately recovered”; (l) Failing to settle claims promptly, where  
13 liability has become reasonably clear, under one portion of the insurance policy coverage in order to  
14 influence settlements under other portions of the insurance policy coverage”; and (n) “Failing to  
15 provide promptly to an insured a reasonable explanation of the basis in the insurance policy, with  
16 respect to the facts of the insured's claim and the applicable law, for the denial of the claim or for an  
17 offer to settle or compromise the claim.”

18 104. Zurich failed to act in good faith and violated the Act when it refused without proper  
19 cause: to compensate MGM for a loss covered by the policy, to pay for the costs of its defense, to  
20 respond to MGM's questions and demands, to provide any explanation or accounting for its failures  
21 to pay, or to assist MGM in remedying its bad faith, even though Zurich knew or disregarded the fact  
22 there was no reasonable basis for its refusals.

23 105. Zurich further failed to act in good faith and violated the Act when it attempted to  
24 use its willful refusal to pay Defense Costs as leverage against its own policyholder to attempt to  
25 exhaust its coverage limit prematurely so as to end the duty to defend, without regard to the best  
26 interests of the policyholder and the ongoing defense of the Underlying Litigation.

27 106. Zurich further failed to act in good faith and violated the Act when it stated it would  
28 not pay for reasonable and necessary settlement administration costs or settlement administrators'

1 fees either as Defense Costs or as Supplementary Payments, without regard to the best interests of  
2 the policyholder and reasonable efforts to resolve the Underlying Litigation.

3 107. Zurich acted in bad faith and violated the Unfair Claims Practices Act by engaging  
4 in unfair insurance practices in the ways set forth at greater length above. Accordingly, Zurich is  
5 liable to MGM for all damages sustained as a result of its conduct in violation of the Act

6 108. As a result of Defendants' tortious conduct, and oppression, fraud or malice, express  
7 or implied, MGM is also entitled to punitive damages under NRS § 42.0005(1).

### 8 **PRAYER FOR RELIEF**

9 WHEREFORE, MGM respectfully prays that this Court:

10 1. Award MGM its actual damages sustained as a result of Zurich's breach of its duty  
11 to defend in the Underlying Litigation, including but not limited to MGM's costs to defend (and  
12 potentially settle) the Underlying Litigation, and MGM's attorneys' fees and costs of court for this  
13 Action in an amount to be established through proof but which amount is in excess of \$75,000;

14 2. Award MGM consequential damages proximately caused by and flowing from  
15 Zurich's tortious breach of the implied covenant of good faith and fair dealing, including but not  
16 limited to MGM's costs to defend (and potentially settle) the Underlying Litigation (which amount  
17 is in excess of \$75,000), MGM's attorneys' fees and costs of court for this Action (which amount is  
18 in excess of \$75,000), and MGM's defense counsel's and vendors' additional costs incurred in  
19 attempting to recover their fees and costs from Zurich (which amount is in excess of \$75,000);

20 3. Award MGM damages sustained as a result of Zurich's violation of Nevada's Unfair  
21 Claims Settlement Practices Act, including but not limited to MGM's costs to defend (and potentially  
22 settle) the Underlying Litigation (which amount is in excess of \$75,000), MGM's attorneys' fees and  
23 costs of court for this Action (which amount is in excess of \$75,000), and MGM's defense counsel's  
24 and vendors' additional costs incurred in attempting to recover their fees and costs from Zurich  
(which amount is in excess of \$75,000);

25 4. Award MGM the declaratory relief requested herein;

26 5. Award MGM punitive damages;

27 5. Award MGM pre-judgment interest and post-judgment interest;

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6. Award MGM costs of court;
7. Award MGM its attorneys' fees; and
8. Award MGM such other and further relief to which it may be entitled.

**JURY DEMAND**

MGM demands a trial by jury for any and all issues so triable.

DATED this 19th day of June, 2019.

SEMENZA KIRCHER RICKARD

/s/ Jarrod L. Rickard

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